



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/666,557

09/22/2003

John H. Sohl III

36507-193187

5540

26694 7590 04/06/2009  
VENABLE LLP  
P.O. BOX 34385  
WASHINGTON, DC 20043-9998

EXAMINER

FISHER, PAUL R

ART UNIT

PAPER NUMBER

3689

MAIL DATE

DELIVERY MODE

04/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## DETAILED ACTION

### *Response to Amendment*

1. The reply filed on January 21, 2009 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): The amended claims, particularly claim 1, has changed the scope of the invention, and thus are directed to an invention distinct from and independent from the invention previously claimed. The claims are now directed toward a different invention than previously submitted the invention has been constructively elected by original presentation, see explanation below. Since, the claims are no longer directed toward the original matter, none of the claims can be examined, and thus the amendment is considered to be non-responsive. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

### *Election/Restrictions*

1. Newly submitted claims 1-82 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The original claims were directed toward the method of licensing the rights to perform a service, the current set of claims is directed toward the performing of the service itself.

**Claims 1-26** was originally filed for a method of “equipping and training licensed operators to perform sensor data acquisition at remote locations using a smart data system”. **Claims 1-27** is now directed toward “providing sensor data analysis”. As originally claimed the system was directed toward the business aspect of the invention primarily charging fees associated with licensing of the business. Now the invention claimed is directed toward the gathering of the data itself which is the service the business is providing and does not mention the charging of fees or the licensing of rights to perform the service being provided.

For example original claim 1, included the steps of “charging a licensed operator a one time setup fee to obtain a license to provide sensor data acquisition services and to obtain training”, “charging the licensed operator an ongoing subscription fee for access to and use of a smart data analysis system for transmission of data and data warehousing services” and “charging the licensed operator an individual project fee, wherein said individual project fee varies according to the amount of analytics, display, and customer deliverables required”. None of these steps or variants of these steps appear in the current set of claims presented. The original steps were directed toward the charging for license rights or training to carry out a service. Now the claims are directed toward, the service itself such as the following steps currently recited, “receiving environmental subsurface data at a first computer from a first entity, wherein said environmental subsurface data is acquired at a location via a moveable direct reading sensors, wherein said environmental subsurface comprises an area beneath at least one of a surface of each, or a surface of a body of water, and wherein said

Art Unit: 3689

moveable direct reading sensors are placed in said environmental subsurface and said moveable direct reading sensors are in direct contact with at least one of soil, water, or vapor", "analyzing said environmental subsurface data via a data analysis system to obtain information about said subsurface data, wherein said data analysis system comprises at least one of said first or a second computer" and "providing said information to a second entity via said first or second computers or a third computer, wherein the second entity is the same or different than the first entity". It is clear that the claims as currently written are directed toward another completely separate and distinct invention and that none of the currently recited steps are equivalent to the originally filed steps.

Further the newly submitted **claims 27-82** are also not tied to the original invention and are directed toward this new invention of the service itself and the type of data being collected by the service. Specifically claims 28-54 are directed toward "a method of providing data for analysis" and claims 55-82 are directed toward "a method of managing the acquisition of data" neither of which is equivalent to "equipping and training licensed operators to perform sensor data acquisition at remote locations using a smart data system". The Examiner asserts that this new invention causes an undo burden to the Examiner, since it will require a completely different field of search and will likely result in the use of different art.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for

Art Unit: 3689

prosecution on the merits. Accordingly, claims 1-82 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL R. FISHER whose telephone number is (571)270-5097. The examiner can normally be reached on Mon/Fri [7:30am/5pm] with first Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571)272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PRF

/Dennis Ruhl/  
Primary Examiner, Art Unit 3689